

STATE OF MICHIGAN
COURT OF APPEALS

GREENBUSH UNITED METHODIST
CHURCH,

UNPUBLISHED
March 20, 2012

Plaintiff/Counterdefendant-
Appellee,

V

No. 302013
Clinton Circuit Court
LC No. 09-010607-CH

SHAWN PATRICK and JENNIFER PATRICK,

Defendants/Counterplaintiffs-
Appellants,

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., as nominee for GMAC
MORTGAGE, LLC,

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendants, Shawn Patrick and Jennifer Patrick, appeal as of right, following a bench trial, from the trial court's order quieting title to a disputed parcel of property in favor of plaintiff, Greenbush United Methodist Church.¹ We affirm.

Plaintiff acquired title to its property by conveyances from 1897 and 1898. A tree line was adjacent to plaintiff's driveway. Plaintiff's members did not consider the tree line as the boundary line, but maintained approximately ten feet north of the tree line (the disputed area) by

¹ In addition to the Patricks, their mortgage company is also named as a defendant. However, the issue in this case centers around the activity occurring on the property by plaintiff church, the Patrick defendants, and their predecessors in interest. Accordingly, we will use the term plaintiff to refer to the church, and the term defendants references the Patricks.

mowing the area, removing sticks, removing rocks, trimming the trees, removing snow from the area, and for parking. During church functions, the area was used for parking, picnics, or bonfires. A propane tank was placed in the disputed area. Between 1968 and 2005, a farm was adjacent to the church property, and the farmers did not maintain the disputed area. Rather, crops were only farmed up to the area maintained by plaintiff's members. The use of the disputed parcel was established at trial by photographs and testimony from plaintiff's members as well as the former neighboring farm owners. In 2005, a builder notified plaintiff's members that he owned within inches of the church building. However, his conclusion was premised on a survey only, and a deed search was not performed. The builder conveyed twenty feet of property to the church, but did not include the disputed ten foot parcel. Additionally, plaintiff's members did not alter their use and maintenance of the disputed ten foot parcel. A home was built on the property next to the church, and this homeowner did not testify at trial. Defendants purchased the foreclosed home, and the parties disputed the boundary line when defendants commenced the process of building a fence. Plaintiff's attorney notified defendants of the claimed interest, but defendants built the fence despite this notice. This litigation was commenced by plaintiff, and defendants filed a counterclaim. During the litigation, the 1898 deed conveying the disputed parcel to plaintiff was discovered in the belongings of the estate of the church historian. Following a bench trial, the court quieted title to the disputed property in favor of plaintiff. Defendants appeal as of right.

Defendants allege that the trial court erred in concluding that plaintiff acquired title to the disputed land and erred in failing to consider defendants' claim pursuant to the Marketable Record Title Act (MRTA), MCL 565.101 *et seq.* We disagree. "We review the trial court's factual findings after a bench trial and in an equitable action for clear error, and its legal conclusions de novo." *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007). "A trial court's findings are clearly erroneous only when the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* "When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

MCL 565.101 provides, in relevant part:

Any person . . . who has an unbroken chain of title of record to any interest in land for . . . 40 years . . . , shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and which have been recorded within 3 years after the effective date of the amendatory act that added section [MCL 565.101a] or during the . . . 40-year period for other interests. *However, a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interest exists is in the hostile possession of another.* [Emphasis added.]

The legislative purpose underlying the MRTA, MCL 565.101 *et seq*, is to simplify and facilitate land title transactions. MCL 565.106. Stated otherwise, “the fundamental purpose of the statute was to erase all ancient mistakes and errors so that if a party enjoyed a record title for forty years,” other competing claims of record would be extinguished. *Fowler v Doan*, 261 Mich App 595, 602; 683 NW2d 682 (2004), quoting *Henson v Gerlofs*, 13 Mich App 435, 441; 164 NW2d 533 (1968). The act bars competing claims of title to which a party had no notice. *Fowler*, 261 Mich App at 600. However, the MRTA is not applicable to claims premised on “hostile possession.” *Rush v Sterner*, 143 Mich App 672, 678; 373 NW2d 183 (1985). Hostile claims include claims arising from adverse possession. *Cook v Grand River Hydroelectric Power Co*, 131 Mich App 821, 826; 346 NW2d 881 (1984).

The doctrine of adverse possession is designed to encourage land use, and it favors the productive use of land over its disuse. *Canjar v Cole*, 283 Mich App 723, 731; 770 NW2d 449 (2009). Therefore, Michigan law permits a claim for an otherwise unlawful taking of property initially owned rightfully by another. *Id.* For purposes of the doctrine, the possession must be hostile and under cover of a claim of right. *Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006). “The term hostile, as employed in the law of adverse possession is a term of art and does not imply ill will; rather, hostile use is that which is inconsistent with the right of the owner, without permission asked or given, and which would entitle the owner to a cause of action against the intruder.” *Id.* at 92-93 (citations and internal quotations omitted). The acts or uses sufficient to constitute adverse possession are contingent on the facts and circumstances in each case and, to some extent, depend upon the character of the premises. *Jonkers v Summit Twp*, 278 Mich App 263, 273; 747 NW2d 901 (2008).

In *Gorte v Dep’t of Transp*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993), the defendant alleged that the plaintiffs could not establish hostile possession when they believed they were acting within the property line and did not mean to adversely possess the property. This Court disagreed, stating:

The possession must also be hostile to the title of the true owner. Where a landowner possesses the land of an adjacent owner with the intent to hold to the true line, the possession is not hostile and cannot establish adverse possession. By contrast, where a person possesses the land of another intending to hold to a particular recognizable boundary regardless of the true boundary line, the possession is hostile and adverse possession may be established. Simply being mistaken with regard to the true boundary line, however, does not defeat a claim of adverse possession. . . . [I]t would be unjust to limit the application of the doctrine of adverse possession to those adverse possessors who knew the possession was wrong, while excluding those whose possession was by mistake, thereby rewarding the thief while punishing the person who was merely mistaken. . . . [P]laintiffs in this case appear to have intended to hold to particular boundaries, but also believed that the boundary represented the true line. Plaintiffs therefore fall within the second group of adverse possessors in that they respected a line that they believed to be the true boundary, but which proved not to be the true boundary. [*Id.* (citations omitted).]

In the present case, the evidence established that irrespective of the deed to the property from 1898, plaintiff acquired title to the property despite any conflicting conveyance through its hostile use of the property. Between 1968 and 1989, the adjacent parcel of property was a farm with the residence located one city block from the church. Although there was a tree line next to the church's gravel driveway, the adjacent property owners, the Spieces, did not farm the property to the tree line. Rather, Mary Lou Spiece testified that plaintiff's members maintained approximately seven to ten feet north of the tree line. The Smiths purchased the property from the Spieces in 1989, and Greg Smith testified that he respected the relationship that had been in place before his purchase. That is, he did not plant crops to the tree line, and plaintiff's members mowed the area north of the tree line. In 2005, Gerald Frazier, the builder who purchased the property from the Smiths, notified plaintiff's members that he owned the property within inches of the church building. He conveyed twenty feet of land to plaintiff, but did not convey the ten feet north of the tree line, the area in dispute. This conclusion was premised on a survey only, and a deed search did not occur. However, although plaintiff's members accepted the conveyance, they did not alter their behavior. Specifically, they continued to mow the lawn, trim the trees, park in the area, left the propane tank, and continued to hold functions in the disputed area. When defendants acquired the property in 2008, and took steps to place a fence on the church's side of the tree line, plaintiff's attorney objected to the placement, but defendants put the fence up anyway. "[W]here a person possesses the land of another intending to hold to a particular recognizable boundary regardless of the true boundary line, the possession is hostile and adverse possession may be established." *Gorte*, 202 Mich App at 170. Although occasional or periodical entry upon land to cut wild grass is insufficient to constitute actual possession, *Doctor v Turner*, 251 Mich 175, 186; 231 NW 115 (1930), the use must be examined in light of the character of the premises and is contingent on the facts and circumstances of the case, *Jonkers*, 278 Mich App at 273. Here, the use consisted of parking, church functions, lawn maintenance, and snow removal on a weekly basis. The trial court's factual findings established the adverse and hostile possession of the property, and we cannot conclude that the trial court clearly erred. *McDonald*, 480 Mich at 197. Accordingly, the trial court properly quieted title to the disputed parcel in favor of plaintiff.²

Defendants also contend that the trial court erred in its ruling regarding acquiescence. We disagree. The challenge to the trial court's ruling on this issue is premised on defendants' position regarding the facts and does not reflect the factual findings rendered by the trial court. On this record, we cannot conclude that the factual findings were clearly erroneous. *Harbor Park Market, Inc.*, 277 Mich App at 130.

² We reject the assertion by defendants that the *Fowler* decision supports judgment in their favor. The *Fowler* decision involved property that was unused for many years. *Fowler*, 261 Mich App at 600. Additionally, the MRTA bars competing claims of title when the property owner has no notice. *Id.* In the present case, plaintiff's members used the property in dispute before 1968 as well as after the conveyances to the Spieces and the Smiths. Defendants are not entitled to application of the MRTA when they were on notice of plaintiff's claim and the hostile use.

Affirmed. Plaintiff, as the prevailing party, may tax costs, MCR 7.219.

/s/ Amy Ronayne Krause

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood